BEFORE THE

Supreme Court of the United States

OCTOBER TERM 1953

No.....

SAM SWEET,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

To: The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Sam Sweet, defendant-appellant below, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit affirming the judgment of the United States District Court for the Eastern District of Michi-

gan, Southern Division, revoking and cancelling Petitioner's Certificate of Naturalization.

OPINION BELOW

The opinion of the Court of Appeals does not appear to have been reported as yet. A copy is included as an Appendix to this Petition.

The opinion of the District Court is unreported as yet, but is summarized in the Statement *(infra)*.

JURISDICTION

The jurisdiction of this Court is invoked under Title 28 U. S. C., Sec. 1254 (1).

The judgment of the Court of Appeals was entered on February 19, 1954; and by order, dated April 7, 1954, the judgment was stayed for thirty (30) days pending application to this Court for a Writ of Certiorari.

QUESTIONS PRESENTED

I. Has the government established by "clear, convincing and unequivocal" evidence:

(1) That Petitioner was at any time a member of the Communist Party and falsely denied or concealed such membership; and

(2) That the Communist Party was an organization proscribed by the law in effect during the period 1933 to 1946 when it is claimed that the Petitioner was a member; and

(3) That the Petitioner, during the period when it is claimed that he was a member of the Communist Party had knowledge of the proscribed character of that organization?

II. May a judicial finding in naturalization proceedings that a Petitioner has no proscribed organizational connections, be subsequently re-examined and voided because of "fraud" where the claim of fraud is predicated entirely upon a conflict between what the naturalization examiner claims the Petitioner told him at the time of naturalization and testimony given years later by other witnesses?

STATUTES INVOLVED

The Act of June 29, 1906 (34 Stat. L. Part 1, p. 596) as amended, provided in Section 7 thereof:

> "That no person who disbelieves in or is opposed to organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to organized government * * *, shall be naturalized or be made a citizen of the United States."

The above Act of June 29, 1906 and all prior naturalization legislation was superseded by the Nationality Act of 1940 (Title 8, U. S. C., Sec. 700 *et seq.*). The pertinent portions of the 1940 Act are the following:

> "Section 705. No person shall hereafter be naturalized as a citizen of the United States—
>
> (a) Who advises, advocates, or teaches, or who is a member of or affiliated with any organization, association, society, or group that advises, advocates, or teaches opposition to all organized government; or

(b) Who believes in, advises, advocates, or teaches, or who is a member of or affiliated with any organization, association, society, or group that believes in, advises, advocates, or teaches—

1. the overthrow by force or violence of the Government of the United States or of all forms of law; or
2. • • •
3. • • •

(c) Who writes, publishes, or causes to be written or published, or who knowingly circulates, distributes, prints, or displays, or knowingly causes to be circulated, distributed, printed, published, or displayed, or who knowingly has in his possession for the purpose of circulation, distribution, publication, or display any written or printed matter advising, advocating or teaching opposition to all organized government, or advising, advocating or teaching

1. the overthrow by force or violence of the government of the United States or of all forms of law; or
2. • • •
3. • • •
4. • • •

(d) Who is a member of or affiliated with any organization, association, society, or group that writes circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in subdivision (c).

• • • • •

The provisions of this section shall be applicable to any applicant for naturalization who at any time

within a period of ten years immediately preceding the filing of the petition for naturalization is, or has been, found to be within any of the clauses enumerated in this section, notwithstanding that at the time petition is filed he may not be included in such classes."

* * *

"Section 707(a). No person, except as hereinafter provided in this Act, shall be naturalized unless such petitioner,

(1) immediately preceding the date of filing petition for naturalization has resided continuously within the United States for at least five years and within the State in which the Petitioner resided at the time of filing the petition for at least six months,

(2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and

(3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States."

* * *

"Section 738(a). It shall be the duty of the United States District Attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of Section 301 [Title 8, U. S. C. Sec. 701] in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured."

STATEMENT

Petitioner, Sam Sweet, a native of Poland, entered this Country for permanent residence in 1930 at the age of 19. He has resided here ever since. He is married to a naturalized citizen and they have two native born children.

During the 1930's, Petitioner was very active in the organization of the Auto Workers Union in Detroit; and for several years before and after his naturalization in 1946, he was a well known education director for two of the larger Auto Workers' Local Unions in Detroit.

In the process of obtaining his naturalization, Petitioner made two applications to the Federal District Court in Detroit. The first petition was made out and filed by him in 1936. In this petition, he affirmed that he was "not a disbeliever in or opposed to organized Government or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized Government." He also affirmed his attachment to the principles of the Constitution of the United States. This 1936 petition, after investigation by the Immigration Service, was denied by the Court in 1939 upon the ground that Petitioner had failed "to prove attachment to the United States Constitution".

In March, 1945, Petitioner filed a second petition which was similar in form and content to his first petition (Exh. 2). This petition likewise was investigated by the Immigration Service and there appears thereon the notation, "Recommend complete investigation and talk with Besoit U. S. before Q. & A is taken. Confidential."

However, the Immigration Examiner testified that no written question and answer statement was taken by him from the Petitioner (R. 42).

Upon recommendation of the Immigration Examiner, this second petition was granted by the United States District Court at Detroit on February 5, 1946 and a certificate of naturalization was issued to the petitioner.

The present proceeding was instituted on January 27, 1950 under Section 338(a) of the Nationality Act of 1940 (54 Stat. 1158; Title 8, U. S. C. 738 (a)), for the purpose of cancelling Petitioner's citizenship on the grounds of fraud and illegal procurement. The Complaint charges that Petitioner had been a member of the Communist Party of the United States from 1933 to 1946 and that he had denied such membership during his naturalization examination; that the Communist Party, during this period, had advocated the overthrow of the Government by force and violence; and that Petitioner's citizenship had been "fraudulently and illegally procured in violation of Section 305(a), 307(a) and 335(a) of the Nationality Act of 1940" (50 Stat. 1141, 1142, and 1157, Title 8, U. S. C. 705(a), 707(a) and 735(a).

Petitioner's Answer denied the material allegations of the Complaint and alleged that the above provisions of the Nationality Act of 1940, on their face "and as applied to this defendant by the plaintiff, deprived defendant of rights guaranteed to him under the First and Fifth Amendments to the Federal Constitution".

The theory of the Government, as announced at the trial (Tr. 2),[1] was that cancellation should be ordered on the ground of fraud in "that the defendant concealed from the naturalization examiner and from the Court the fact that he was a member of the Communist Party or had been within the ten years previous to his naturalization"; and second, because of illegal procurement "in that he was a

[1] "Tr." refers to the trial transcript.

member of the Communist Party and thus fell within a class that was unlawful to be naturalized".

Counsel for the Petitioner took the position that the judgment of naturalization was *res adjudicata* of the issues raised by the Complaint and could not be collaterally attacked in this proceeding (Tr. 5).

At the trial Petitioner was called by the Government for cross-examination and identified the naturalization documents executed and filed by him. He refused (Tr. 32) upon constitutional grounds to answer the question whether he had been a member of the Communist Party during the ten year period prior to his naturalization. He stated also, that he did not recall being asked at the time of his naturalization whether or not he was a member of the Communist Party.

The naturalization examiner was then called as a witness and testified that he had an independent recollection (Tr. 39) of his examination of the Petitioner and that he recalled that Petitioner's file contained a memorandum that Petitioner "had been a Communist teacher in one of the Local Unions" (Tr. 40). He also stated (Tr. 37) that he inquired of Petitioner and that Petitioner denied having "ever been a member of the Communist Party". The examiner identified (Tr. 36) the notation "C. P. Member—question mark" and said that he made this notation upon Petitioner's application for citizenship (Exh. 2).

Thereafter, four additional witnesses were called by the Government, each of whom testified that he had been a member of the Communist Party and identified Petitioner as a member.

The witness, Fountain, said that he knew the Petitioner as a member of the Communist Party in 1937 and 1938 and had attended closed Communist Party meetings at which

the Petitioner was present (Tr. 44-47). He recalled that Petitioner was "very articulate at all meetings" (Tr. 57). On cross-examination, he recalled a meeting of Communist trade unionists in May, 1937, at which Petitioner and about twenty-five other persons were present (Tr. 55-58), and he recalled that Petitioner "spoke about the struggle going on in the world and what conditions were like in Europe and the Nazis and why it was important for party people to be very active in the Union and to try to win the Union over to their point of view in this country" (Tr. 57). He also recalled seeing Petitioner at caucuses of some thirty-five Communists who were in attendance at the Auto Worker's Convention in Milwaukee in August, 1937 (Tr. 60-66) at which he heard Petitioner affirm that "we should stand firm against Homer Martin" for President of the Union. Later this witness recalled (Tr. 79) an "educational meeting" at which Petitioner "delivered a lecture," the content of which the witness did not recall (Tr. 84), but did recall that in the course of his remarks Petitioner said "this is Communist policy worked out by the leaders of our party and this is what we have got to do in the Trade Union Movement" (Tr. 80).

He also recalled seeing Petitioner at a Communist State Convention in June 1938 and that he heard Petitioner "make some kind of a report as chairman or secretary of some commission that was set up by the Convention to deliberate on resolutions or some such matter and then report back" (Tr. 72), but he could recall neither what the resolutions were about nor what Petitioner was supposed to have said.

Other than the above statements attributed to the Petitioner, the witness, Fountain, was unable to recall anything else that Petitioner—whom he regarded as "a leader" (Tr. 58)—had said at any Communist meeting; notwithstanding,

"I probably saw him once a month or once every six weeks for the duration of my membership in the Communist Party" (Tr. 59).

The witness, Dearnley, a naturalized citizen, testified that he and Petitioner were members of the same Local Union and that Petitioner had recruited him into the Communist Party in 1940 (Tr. 87); that Petitioner had discussed the Party with him on several prior occasions, but had told him that, as an alien, he would be ineligible for Party membership until he became a citizen (Tr. 95-96). He worked with Petitioner "continuously from the date of my meeting him until I quit from the Party" in 1945. He was influenced to join the party because of what Petitioner had told him concerning "the role that the Communist played in organizing and helping the Trade Union Movement to grow" (Tr. 93-94).

Notwithstanding, this witness testified that he assisted Petitioner as educational director for their local union, traveling and working closely with Petitioner at all times and eventually succeeding Petitioner as educational director for the local union (Tr. 91), the witness was unable to recall any Communist activity or speeches by Petitioner aside from attendance at alleged Communist meetings and discussion of trade union matters.

This witness was expelled by his local union in 1946 for misappropriation of funds and Petitioner again became Educational Director (Tr. 102-103).

The witness, Elder, testified (Tr. 114-115) that he attended two closed Communist meetings between 1936 and 1943 at which Petitioner was present but did not speak. The first of these was in 1939 with 130-160 people present; the second meeting was "either '41 or '42" with "200 to 220" people present (Tr. 123). Later he recalled one other

meeting of 8 or 10 persons (Tr. 126) at which Petitioner spoke. This was an "educational" meeting "in a private home", at which Petitioner explained "the meaning of the Hitler-Stalin pact * * * thuswise, that the character of the whole world situation had changed, that instead of just a regular war, why it was a war in which the workers had to really put an end to fascism" (Tr. 117). This meeting "could have been '39, '40 or '41" (Tr. 127). A few pages later in the record (Tr. 129) this witness was unable to repeat what he had previously testified Petitioner said at this meeting. Moreover, this witness had previously given to "a government agency" a list of 160 persons whom he stated were members of the Communist Party, but had not mentioned Petitioner (Tr. 131).

The witness, Nowell, employed since 1948 as a "consultant", in "the field of Communism" by the Immigration and Naturalization Service at Detroit, testified that he was a member of the Communist Party in 1933 and that he was introduced to Petitioner by the District Organizer of that party at the party's headquarters in Detroit (Tr. 145). The witness was at that time District Director of Education for the party and Petitioner "was recommended to me as one who would make a good member of [the Educational Commission] because of his alertness and his willingness to learn and he seemed to be interested in educational matters." He had "conferences" with Petitioner, saw his membership book, and appointed Petitioner to the party's "agitation and propaganda commission and the school commission".

Notwithstanding, this witness indicated that he was in frequent contact with the Petitioner, saw him at "meetings of the educational commission," and discussed with him "the political and ideological education of the party

membership" (Tr. 147), he was unable to testify to a single statement made by the Petitioner during the entire period from 1933 to 1936 when he is supposed to have known Petitioner as an active party member (Tr. 153).

At the conclusion of this testimony, it was stipulated between the parties (Tr. 175-179) that two other witnesses, Charles Baxter and Paul Crouch, if called to the stand, would each testify "he was an active member and functionary of the Communist Party of the United States" from 1927 until about April 1945 and from 1927 until 1942, respectively,[2] and

> "that on the basis of their membership, training, experience and activities in the Communist Party of the United States and on the basis of the documents, pamphlets and literature hereinafter mentioned, which were circulated, distributed, printed or published by the Communist Party of the United States during the period of their membership, that during the period of their membership, the Communist Party of the United States advocated, taught and advised the overthrow of the Government of the United States by force and violence."

The documents referred to here are Exhibits 4 to 18 (Tr. 178); and for the most part are the same documents considered by this Court in *Schneiderman v. United States*, 320 U. S. 118.

There was no evidence that any of these documents had ever been seen, heard of or read by the Petitioner; nor was there any evidence that any of these documents were distributed by the Communist Party in Michigan. The meaning and intent of this stipulation appears from the following colloquy (Tr. 180):

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[2] The place of membership in the United States is not indicated.

"Mr. Goodman: In connection with the stipulation I want the record to clearly show that in agreeing to the stipulation, we do not in any way agree to the facts or to the truthfulness of the facts concerning which these witnesses did testify.

The Court: No. Your stipulation is directed to this; that if these witnesses testified they would testify in the manner set out in the stipulation and would testify to the facts set out in the stipulation.

Mr. Goodman: That's right.

The Court: But you don't admit those facts to be truthful.

Mr. Goodman: That's right."

Counsel for the defendant then announced that the defendant would not introduce any testimony in the case (Tr. 181).

The Trial Court rendered an opinion (unreported), the pertinent portions of which are as follows:

"Despite the fact that the Government's witnesses are former Communists who may have had ulterior motives for testifying in the trial of this action, the evidence is convincing, and I find as a fact, that the defendant was for some time during the ten year period prior to his naturalization, a member of the Communist Party of the United States.

I find too, on the basis of the evidence that the Communist Party of the United States was, during the period in question, an organization that advised, taught and advocated the overthrow of the Government of the United States by force and violence. The evidence on this point was introduced by stipulation that two named expert witnesses, if they were to take the stand, 'would testify' * * * [quoting the stipulation]. These men were Communist Party members during the years

that witnesses testified that the defendant was a member of that Party. The fifteen pieces of Communist literature introduced in evidence on the basis of the stipulation are indicative of the place that the Communist creed accords to the use of force and violence for the purpose of overthrowing existing governments.

The testimony left no doubt that the defendant concealed his history of Party membership from the naturalization authorities and thereby thwarted inquiry into his eligibility for naturalization.

The Supreme Court in *United States v. Ness*, 245 U. S. 319 at 325, has held that the statutory provision for denaturalization is a remedy 'broader than that afforded in equity, independently of statute, to set aside judgments * * *' The Supreme Court has since made it clear that fraud as a statutory ground for denaturalization need not be extrinsic. *Knauer v. United States*, 328 U. S. 654.

The evidence introduced at the trial of this action met the test set forth by the Supreme Court in *Schneiderman v. United States*, 320 U. S. 118 that in order to set aside a certificate of naturalization the proof of fraud in its procurement must be clear, convincing and unequivocal. We are not here, as in the *Schneiderman* case and in the later case of *Baumgartner v. United States*, 322 U. S. 665, concerned with the defendant's state of mind at the time of naturalization, a condition necessarily difficult to ascertain and prove, but with an objective fact which may be established with that degree of proof necessary to convince reasonable minds.

I hold that the evidence introduced by testimony and stipulation in this action constitutes clear and unequivocal proof that the defendant was a member, during a part of the ten year period preceding his naturalization, of an organization that ad-

vised, taught and advocated the overthrow of the Government of the United States by force and violence. The certificate of naturalization was fraudently obtained and an order revoking it may be presented for signature."

The Court of Appeals affirmed the Judgment of Cancellation. Its opinion is unreported but is included as an Appendix to the Petition.[3]

REASONS FOR GRANTING THE WRIT

In the years preceding the close of World War II, the Courts generally were unconvinced that the Communist Party advocated violent overthrow of our government. *Schneiderman v. United States,* 320 U. S. 118 (1943); *Ex parte Fierstein,* 41 F. 2d 53 (C. A. 9th, 1930); *Strecker v. Kessler,* 95 F. 2d 976 (C. A. 5th, 1938). There is no doubt that this view accorded with public opinion. During this entire period the Communist Party's practical activity was that of a recognized political party, proposing candidates for office in Michigan and nationally and campaigning upon economic and social issues having a vital appeal to the masses of the people. On the basis of F. B. I. figures, it is estimated that the Party attracted 100,000 members in the early 1940's and that there are approximately 700,000 past members of the Communist Party in this Country.[4] Undoubtedly, many of these persons were aliens who have since become naturalized citizens. This is attested by the fact that the Department of Justice has announced its intention to institute denaturalization proceedings against

[3] This case was argued and decided by the Court of Appeals at the same time as *Charnowola v. United States* and *Chomiak v. United States;* and Petitions for Certiorari are being filed in these cases also.

[4] Ernst and Doth, *Report on the American Communist* (1952) p. 14.

some 10,000 naturalized citizens who, it is claimed, were past members of the Party or its affiliates. (Attorney General's public statement of March 17, 1953).

In recent years the Government's view of the Communist Party has changed decidedly from what it was in the pre-World War II period. This change is reflected in current Congressional enactments and investigations, Executive Loyalty Orders, and also in judicial comments.

The crucial issue posed by this denaturalization proceeding, is whether the organizational proscription contained in Section 305 of the *Nationality Act of 1940, supra,* as it relates to past membership in the Communist Party, is to be appraised, interpreted and applied in the light of current national and international considerations: or in the light of what the generally accepted view of the Party and its activities were during the period of the Petitioner's alleged membership? If the former test is applied, as it was in the Courts below, then thousands of persons who at one time or another prior to their naturalization may have had innocent membership in or sympathetic contact with organizations now regarded as subversive, are in grave danger of losing their valuable rights of citizenship solely because of their inability to predict the course of political events in subsequent years and their reliance upon the law as it existed at the time of such membership or affiliation.[5]

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[5] Prior to the Nationality Act of 1940 the only organizational proscription that would bar naturalization was membership in or affiliation with an organization teaching "disbelief in or opposition to organized government." (Act of June 29, 1906, as amended, Section 7, *supra.*) This proscription was interpreted by the Courts as barring anarchists. Since the Communist Party obviously was not opposed to organized government (Judge Pound and Judge Cardozo dissenting in *People v. Gitlow*, 234 N. Y. at 132; and *Strecker v. Kessler*, 95 F. 2d 976, affirmed on other grounds, (307 U. S. 22)), this proscription was not regarded as a bar to the naturalization of a member of that Party. And this was the view of Congress at the time it undertook the codification which resulted in the Nationality Act of 1940. (86th Congress. Rec. 11942.)

I.

In every denaturalization case that has come before this Court, this Court has emphasized that the high value attached to citizenship is such that citizenship can be revoked only where all of the facts material to the charge are made to appear by "clear, unequivocal and convincing" evidence. *Schneiderman v. U. S.*, 320 U. S. 110; *Knauer v. United States*, 328 U. S. 654. This admittedly high standard of proof was not satisfied in this case because:

(a) The evidence as to membership in the Communist Party consists entirely of (1) the uncorroborated recollections of four witnesses, each testifying as to separate and distinct gatherings, at different times and places, characterized by them as "Communist meetings" at which Petitioner is said to have been present; and (2) the unsupported statement of the witness, Nowell, (a paid Government informer) to the effect that he saw Petitioner's membership book (R. 146-147).

(b) The evidence claimed to show the character of the Communist Party's teaching and advocacy consists entirely of the conclusions of two alleged members based upon documents which were considered by this Court in *Schneiderman* and found to be insufficient to support the conclusion that that organization, *in the years in question*, advocated the violent overthrow of our Government; and

(c) There is a complete absence of *any* evidence tending to show that Petitioner was a *knowing* member of any organization proscribed by the statute at any time.

If the right of citizenship can be divested upon such questionable evidence as that presented in this case, then it is exceedingly doubtful if the citizenship of any naturalized person can be regarded as secure.

II.

The Nationality Act of 1940, *supra,* did not proscribe the Communist Party by name. This did not occur until 1950 when Congress passed the Internal Security Act, (64 Stat. 1015). But even in this 1950 Act the Congress, in Section 4(f) of that Act, manifested its intention (evident from the history of all prior Congressional consideration of the Communist issue), that membership in the Communist Party *per se* should not be held to be illegal. This would appear to indicate, at the very least, that in all instances where a statute in terms proscribes membership in an organization *by characterization rather than by name*, the true interpretation is whether or not the organizational activity of the individual is shown to have been of a nature as would bring him within the reason for the organization proscription.[6] This we submit, is the necessary import of this Court's holdings in all prior denaturalization proceedings. *Schneiderman* case, 320 U. S. 118, 158; *Baumgartner* case, 322 U. S. 665 and the *Knauer* case, 328 U. S. 654, 669. See also *Bridges v. Wixon,* 326 U. S. 135. The question in each case is what the individual did or said and not what the organization or its leaders may have taught or advocated.

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[6] In *Carlson v. Landon,* 342 U. S. 524, 541, which arose under the 1950 Internal Security Act, this Court again reiterated the necessity for showing "membership plus personal activity in supporting" the claimed illegal purposes of the Communist Party, notwithstanding the Act there proscribed the Communist Party by name.

The theory on which the present case was prosecuted, decided and affirmed in the Courts below completely ignores this requirement of a *knowing* or informed membership status; and makes the statute's organizational proscription applicable to innocent membership. The judgment below is, therefore, at variance with this Court's recent holdings in *Garner v. Los Angeles Board*, 341 U. S. 716, and *Weiman v. Updegraff*, 344 U. S. 183.

(The point we urge here is more fully discussed in the briefs filed in this Court by the Petitioner in the pending deportation case of *Galvan v. U. L. Press*, No. 407, October Term, 1953. Reference is made to the authorities therein cited.)

III.

A careful search of this Court's opinions in denaturalization cases has failed to reveal a definitive statement by this Court on the extent to which factual findings made by a a naturalization Court as a condition precedent to its judgment of naturalization, may later be relitigated and set aside. The question was alluded to but not decided by the majority in *Schneiderman*, 320 U. S. 118 at 124-125; though it was discussed and appears to have been the basis for the concurrence of both Mr. Justice Douglas and Mr. Justice Rutledge.

The question was regarded as not pertinent and hence was not decided in *Knauer*, 328 U. S. 654 at 670; the issue there was alleged falsity in the oath—a matter subsequent to the judgment of naturalization.

In both *Schneiderman* and *Knauer* reference is made to *United States v. Throckmorton*, 98 U. S. 61, and its holding that only extrinsic fraud will void a judgment. This was the rule of law at the time Section 338(2) of the Na-

tionality Act of 1940, *supra*, was adopted; and there is no indication in that Section, nor in its legislative history, of a Congressional intent to change this rule of law in denaturalization cases. Indeed, in commenting upon this Section of the Act, the House Committee (H. R. 1789, 50th Congress) disclaimed any intention to change "the fundamental principles of existing law governing such cases." (Quoted in *United States v. Kusche*, 56 F. Supp. 201 at 222.)

The present status of the case law on this question is one of confusion. (See the opinion in *United States v. Kusche*, 56 F. Supp. 201 (D. D. Cal. 1944), which undertakes to summarize the facts and the holding in all prior denaturalization cases.) Because of the importance of this issue this Court should grant the writ in order to clarify the law.

CONCLUSION

For the reasons herein stated it is respectfully submitted that this Court should grant its Writ of Certiorari to review the judgment of the Court of Appeals in this matter.

Respectfully submitted,

GOODMAN, CROCKETT, EDEN & ROBB,
By ERNEST GOODMAN and
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Dated: May 5, 1954.

APPENDIX

Nos. 11794, 11841, 11912

UNITED STATES COURT OF APPEALS
for the Sixth Circuit

Appeals from the United States District Court for the Eastern District of Michigan

(Filed February 19, 1954)

Sam Sweet,
Appellant,
11794 v.
United States of America,
Appellee.
Nicholai Chomiak,
Appellant,
11841 v.
United States of America,
Appellee.
George Charnowola,
Appellant,
11912 v.
United States of America,
Appellee.

Decided February 19, 1954

Before Allen, Martin and McAllister, Circuit Judges.

Per Curiam. In these three denaturalization procedings, argued together on appeal though tried before different United States District Judges in the Eastern District of

Michigan, the naturalization orders admitting the respective appellants to citizenship were revoked and set aside and the certificates of naturalization issued to them were cancelled and held to be null and void.

Each of the three cases related to the applicability and effect, in the circumstances presented, of the Nationality Code of 1940, section 705, Title 8, U. S. C. A., which forbade the naturalization as a citizen of the United States of anyone who had at any time within a period of ten years immediately preceding the filing of his or her petition for naturalization been a member of or affiliated with any organization, association, society, or group which believes in, advises, advocates, or teaches the overthrow by force or violence of the Government of the United States. The statute also provides that it should apply to any person found to be within any of the classes enumerated, notwithstanding that at the time the petition was filed he might not be included in such class.

The able and experienced district judge in each of the three cases filed a succinct opinion stating the reasons for his decision.

In No. 11,794, the *Sam Sweet* case, District Judge Levin found the evidence convincing that the defendant had been for some time during the ten-year period prior to his naturalization a member of the Communist Party of the United States. This finding of fact was based upon substantial evidence and is not clearly erroneous. Judge Levin found further, on the basis of evidence amply supporting the finding, that the Communist Party of the United States was, during the period in question, an organization that advised, taught, and advocated the overthrow of the Government of the United States by force and violence. He found, too, that the testimony left no doubt that the de-

fendant had concealed his history of Communist Party membership from the naturalization authorities and had thereby thwarted inquiry into his eligibility for naturalization. The Judge stated correctly that the Supreme Court had made it clear that fraud as a statutory ground for denaturalization need not be *extrinsic,* as contended by counsel for the defendant. *Knauer v. United States,* 328 U. S. 654. It was declared that the evidence introduced met the test required by *Schneiderman v. United States,* 320 U. S. 118, inasmuch as it supported clear findings and constituted unequivocal proof that the defendant had been, during a portion of the ten-year period preceding his naturalization, a member of an organization which advised, taught and advocated the overthrow of the Government of the United States by force and violence. The Court was not concerned, as in the *Schneiderman* case and in *Baumgartner v. United States,* 322 U. S. 665, with the state of mind of the defendant at the time of naturalization, "a condition necessarily difficult to ascertain and prove, but with an objective fact which may be established with that degree of proof necessary to convince reasonable minds."

This court is of opinion that Judge Levin's decision rested upon sound grounds and should be upheld.

In No. 11,841, the *Nicholai Chomiak* case, Judge Thornton found the evidence convincing that the defendant had been a member of the Communist Party of the United States from 1933 to 1938 and that, during such period, the Communist Party was an organization which believed in, advised, advocated and taught the overthrow by force and violence of the Government of the United States. Wherefore, the United States District Judge held the defendant to be a person who was prohibited by statute from becoming a naturalized citizen and one whose naturalization had not been issued in accordance with statutory require-

ments. He cited *United States v. Ginsberg,* 243 U. S. 472, 475, to the effect that if naturalization be procured when prescribed qualifications have no existence in fact, it is illegally procured; and held that Chomiak had procured his naturalization illegally and that accordingly his certificate of citizenship should be revoked. We think Judge Thornton's reasoning was sound.

In No. 11,912, the *George Charnowola* case, Judge Picard pointed out that the defendant was not charged with being a Communist, either at the present time or during the ten-year period previous to his application for citizenship; but that the gist of the Government's action to cancel his citizenship was the false information which he gave to the Naturalization Examiners under oath when he stated that he had never been a Communist when, as a matter of fact, he had been. The Judge quoted from the opinion of the Supreme Court in *United States v. Ginsberg,* 243 U. S. 472, 475, *supra,* as follows: "No alien has the slightest right to naturalization unless all statutory requirements are complied with; and every certificate of citizenship must be treated as granted upon condition that the Government may challenge it as provided in Sec. 15 and demand its cancellation unless issued in accordance with such requirements."

Recognizing the principle that once citizenship has been granted the courts must jealously guard its revocation and that evidence upon which revocation can be based must be "clear, unequivocal, and convincing" (*Schneiderman v. United States,* 320 U. S. 118; *Knauer v. United States,* 328 U. S. 654), Judge Picard held that this standard had been met, inasmuch as the evidence was of solid quality and clear, unequivocal and convincing that the defendant had been an active, dues-paying member of the Communist

Party at some time before he filed his petition for naturalization. The Court found, as a matter of fact, that the defendant should have truthfully answered the question of the examiners as to whether he had ever been a Communist, that he had not done so, and therefore had obtained his citizenship by fraud.

The question whether the defendant, Charnowola, had ever been a member of the Communist Party was material upon the issue of whether he should be granted citizenship. The United States District Judge stated that "both here and in Russia it is now apparent that at all times the Communist Party aimed to destroy America by force and violence." He cited *Dennis v. United States,* 341 U. S. 494, 498; *Blau v. United States,* 340 U. S. 161; and *Albertson v. Millard,* 106 F. Supp. 635, 643, 644 (E. D. Mich., 1952). In the last-mentioned case, Chief Judge Simons of this court said: "That the Communist Party of the United States advocates the overthrow of democratic governments, including that of the United States and its states, is supported by a super-abundance of credible evidence, . . . The testimony of the *Dennis* case demonstrated clearly not only that Communism is a world movement but that the leaders of the Communist Party advocated the overthrow of the American Government by force and violence. . . ." Based upon his findings and conclusions, Judge Picard was, in our opinion, correct in ordering the citizenship certificate of George Charnowola cancelled.

We have given due consideration to the excellent oral argument and well-prepared briefs of the astute attorney for the three appellants which present from his viewpoint, as strong as could be stated, alleged reasons for reversal of the three separate judgments of the several district judges, but we are of opinion that no error has been shown to inhere in the judgments. The findings of fact of the

judge in each of these cases were supported by substantial evidence and were certainly not clearly erroneous; and the conclusions of law in each case were based upon logically correct reasoning, supported by highest authority.

Accordingly, in each of the three cases, the judgment is affirmed.

FILED
MAY 14 1954
HAROLD B. WILLEY, Clerk

BEFORE THE

Supreme Court of the United States

OCTOBER TERM 1953

No. [redacted] 74

NICHOLAI CHOMIAK,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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BEFORE THE

Supreme Court of the United States

OCTOBER TERM 1953

No.....

NICHOLAI CHOMIAK,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

To: The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Nicholai Chomiak, defendant-appellant below, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit affirming the judgment of the United States District Court for the Eastern District of Michigan, Southern Division, revoking and cancelling Petitioner's Certificate of Naturalization.

OPINION BELOW

The opinion of the Court of Appeals does not appear to have been reported as yet. A copy is included as an Appendix to the Petition for Certiorari in *Sam Sweet v. United States,* which is filed simultaneously with this Petition. The Court of Appeals rendered combined opinions in this case, the *Sweet* case and the case of *Charnowola v. United States.* Separate Petition for Certiorari is being filed in each of these cases.

The opinion of the District Court is unreported as yet, but is summarized in the Statement *(infra).*

JURISDICTION

The jurisdiction of this Court is invoked under Title 28 U. S. C., Sec. 1254 (1).

The judgment of the Court of Appeals was entered on February 19, 1954; and by order, dated April 7, 1954, the judgment was stayed for thirty (30) days pending application to this Court for a Writ of Certiorari.

QUESTIONS PRESENTED

I. Has the government established by "clear, convincing and unequivocal" evidence:

(1) That Petitioner falsely denied or concealed membership in the Communist Party; and

(2) That the Communist Party was an organization proscribed by law either during the period of 1933-

1938 when Petitioner admittedly was a member and/or at the time of Petitioner's naturalization in 1945; and

(3) That Petitioner, during the period of his membership in the Communist Party, had knowledge of the proscribed character of that organization?

II. May a judicial finding in naturalization proceedings that a Petitioner has no proscribed organizational connections, be subsequently re-examined and voided because of "illegal procurement", where it appears that Petitioner was not asked and did not volunteer the information that he had been a member of the Communist Party within the ten year statutory period?

STATUTES INVOLVED

The statutory provisions set forth in the Petition for Certiorari in *Sam Sweet v. United States* (which is filed simultaneously with this Petition) are equally pertinent here and are therefore incorporated herein by reference.

STATEMENT

Petitioner, Nicholai Chomiak, a man now 56 years of age, was born in the Ukraine, Russia, and came to this country as a legal, permanent resident in December, 1913. He has lived in Detroit since 1918, is married to an American citizen and has two children (Tr. 251).*

Petitioner has never been arrested for a criminal offense. He endeavored to volunteer in the Army in World War II

*"Tr." refers to the transcript of the trial.

but was rejected for a physical disability. He actively assisted in U. S. O. affairs; in raising funds for Russian War Relief; and worked with a committee that sold $800,000 in War Bonds during the war (Tr. 256-260).

In early life in Russia, Petitioner studied for the priesthood, but had to discontinue his schooling for financial reasons. He and his family are members of the Russian Orthodox Catholic Church. Since 1933 or earlier, Petitioner has been employed as a cook at the Detroit Workingmen's Cooperative Restaurant. This Cooperative has "around 300 members" (Tr. 253). Prior to his U. S. O. and war relief activities, Petitioner had interested himself in choral work among Russian and other language groups in the Detroit area (Tr. 255).

In December, 1940, Petitioner filed the alien registration form required by the Alien Registration Act. This form was not a part of the naturalization record and was not considered by the naturalization examiner (Tr. 27). In filling out this form and listing his organizational activities (Exh. 1), during the preceding five year period, Petitioner listed the "Detroit Cooperative Restaurant" and the "I. W. O." (International Workers Order). No mention was made by him of any connection with the Communist Party nor of his membership in the Russian Orthodox Church.

In April, 1945, Petitioner filed his Application for Naturalization (Exh. 2). In this form he answered "No" to the question, "Are you a believer in anarchy or the unlawful damage, injury, or destruction of property or sabotage."

On June 28, 1945, Petitioner filed his Petition for Naturalization (Exh. 3) and therein affirmed:

> "I am not, and have not been, for the period of at least ten (10) years immediately preceding

> the date of this petition, an anarchist; nor a believer in the unlawful damage, injury or destruction of property or sabotage; nor a disbeliever in or opposed to organized government; nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government."

Neither of these two Immigration forms (Exhs. 2 and 3) executed by Petitioner required him to list any past or present organizational affiliations.

Petitioner was examined orally by the Immigration Examiner at the time of his petition for naturalization. During the course of this examination the Examiner asked Petitioner if he had "ever belonged to any organization opposed to the form of Government we have in the United States?" Petitioner answered, "No." Petitioner was not asked by the examiner if he was or had been a member of the Communist Party (Tr. 276); nor did Petitioner volunteer an answer to this question.

Upon recommendation of the Immigration Service, Petitioner was naturalized by the United States District Court at Detroit, Michigan on April 7, 1945. The Complaint to cancel Petitioner's naturalization was filed on March 7, 1950. It charges that Petitioner's certificate of naturalization was obtained by fraud and by illegal procurement in violation of Sections 305 (a) and 335 (a) of the Nationality Act of 1940 (Title 8, U. S. C., Secs. 705(a) and 735(a)). Specifically it is charged that Petitioner made false and fraudulent representations in his petition "in that the said defendant concealed the fact that he was a member of and affiliated with the Communist Party of the United States" and that his naturalization was fraudulently and illegally procured "in that he was not a person of good moral character; was not attached to the principles of the Constitu-

tion and well disposed to the good order and happiness of the United States; and was barred from naturalization as a member of a proscribed organization during the ten year statutory period.

Petitioner's Answer denied the material allegations of the Complaint.

The Trial Court made no finding on the charge of fraud or lack of good moral character or lack of attachment. Instead, its opinion and judgment is predicated solely upon a finding that Petitioner's citizenship was illegally procured in that he had been a member of the Communist Party within the statutory ten (10) year period and as such was ineligible for citizenship.

At the trial, the Immigration Examiner who had examined Petitioner at the time of his naturalization, testified that he was conscious at the time of the fact that Petitioner was Russian and that "in my mind Russia is associated with the destruction of Government"; or "Well, is he a Bolshevik?" Accordingly, the examiner stated that he asked Petitioner "have you ever belonged to any organization opposed to the form of Government we have in the United States?" He did not inquire and Petitioner did not volunteer whether or not Petitioner was ever a member of the Communist Party (Tr. 33-36).

Petitioner was called by the Government as a witness. He identified his alien registration form and his naturalization petitions, but declined to state whether or not he had "ever been a member of the Communist Party." He relied upon his privilege "under the Fifth Amendment" and was not directed to answer this or subsequent questions relating to affiliation with the Communist Party (Tr. 5-14).

Thereafter, four witnesses were called by the Government, each of whom testified that he was a former member

of the Communist Party. Three of these witnesses stated they had known Petitioner as a member of the Communist Party "core" or "fraction" at the Detroit Cooperative Restaurant and that they had seen Petitioner at closed meetings of Communist Party members between 1933 and 1938. The witness Nowell also testified that he (Nowell) had discussed the aims and objectives of the Communist Party at some of these meetings and that Petitioner's "status of development" was found by him to be "a pretty thorough understanding of the [Communist] program, policies * * * and to be in agreement with those policies" (Tr. 100, 113). There is no other testimony concerning any Communist Party activity by Petitioner; nor is there any testimony at all concerning any teaching or advocacy by Petitioner.

Two of the witnesses identified literature distributed by the Communist Party during the period of their membership. One of them, the witness Nowell, now employed by the Imigration Service, stated as his conclusion, that the Communist Party did teach and advocate the overthrow of the Government by force and violence and that he (Nowell) personally had engaged in such teaching and advocacy while a member. He was not corroborated on this point by any other witness. Moreover, he was unable to tie the Petitioner in with any such teaching and advocacy except to state, as indicated above, that Petitioner was present on unidentified occasions when he (Nowell) claims to have engaged in such teaching and advocacy.

After listening to Nowell's testimony the Trial Court remarked:

> "You can teach them to a million people, but let us get down to Mr. Chomiak. That is what I am arriving at. This is all very interesting, but I want to get it tied in. I have listened to it, now

> let's see how it has any application to the issue we have here" (R. 111).

And again:

> "A person could be taught a thing, and unless he puts it to practical application what difference does it make? It doesn't make any difference."

The Petitioner was called as a witness in his own behalf. He affirmed his belief in and support of the American Government and denied ever advocating its overthrow (Tr. 265-269). On cross-examination, he stated that he had been a member of the Communist Party in 1938, but he could not recall when he became a member (Tr. 270). He also testi- that he was not asked at the time of his naturalization if he was or had been a member of that Party (Tr. 265, 277). He refused to state what his answer would have been had he been asked, and he also refused to answer if he had ever rejoined the Communist Party after 1938 (Tr. 275).

At the conclusion of the trial, the Trial Judge rendered a written opinion (unreported) in which he referred to the membership proscription in the Nationality Act of 1940, and concluded as follows:

> "Based on the evidence at the trial of this cause, which was convincing, I find as a fact that the defendant was a member of the Communist Party of the United States from 1933 to 1938.
>
> From the testimony and the exhibits I further find that the Communist Party of the United States was, during the years 1933 to 1938, an organization that believed in, advised, advocated and taught the overthrow of the Government of the United States by force and violence.
>
> The defendant was, therefore, a person who was prohibited by statute from becoming naturalized, and a person whose naturalization was not issued in accordance with statutory requirements."

After referring to *Orth v. United States*, 142 F. 2d 969, 973 and *United States v. Ginsberg*, 243 U. S. 472, 475, the Trial Court concluded:

> "The defendant herein procured naturalization when the prescribed qualification of non-membership in a certain type of organization did not exist in fact, and his naturalization was therefore illegally procured, and must therefore be ordered revoked. 8 U. S. C. A. Sec. 738(a)."

On appeal to the Court of Appeals, Petitioner argued that this Court's opinion in *Schneiderman v. United States*, 320 U. S. 118, was decisive of the issues presented here; that the questions of whether Petitioner had any membership or affiliation proscribed by the Nationality Act of 1940, and the moral character and attachment required by that Act, were conclusively adjudicated in his naturalization proceeding and were *res adjudicata* in the present proceeding; and, finally, that in any event the evidence fails to establish that Petitioner's membership in the Communist Party was a *knowing* membership in a proscribed organization.

In its brief in the Court of Appeals (p. 23) the Government, in attempting to distinguish *Schneiderman*, said: "First of all, the issue of good moral character or attachment are not before this Court on this appeal." It argued that absence of proscribed membership was a "jurisdictional" requirement and could never be a question of res *adjudicata*. In answer to Petitioner's contention that there was no proof of his personal acquaintanceship with the claimed proscribed aims and objectives of the Communist Party the brief stated (p. 31), "it is the position of the [Government] that proof of [Petitioner's] personal knowledge is not required by the Nationality Act of 1940; that "it is apparent that Congress did not want to impose upon

the Government the burden of proving the personal beliefs of the petitioner."

The opinion of the Court of Appeals appears as an Appendix to the Petition for Certiorari filed in *Sweet v. United States, supra.* The Court adopted essentially the reasoning of the Trial Court.

REASONS FOR GRANTING THE WRIT

The reasons set forth for the granting of the writ in the case of *Sam Sweet v. United States* (Petition filed simultaneously with this Petition) are equally applicable here and are therefore incorporated by reference.

Additionally, this case appears to be on "all fours" with the factual situation before this Court in *Schneiderman v. United States,* 320 U. S. 110. Schneiderman, too, had not been asked and had not volunteered the fact that he had been a member of the Communist Party. His view, like that of the Petitioner here, was that the Party during the period of his membership never advocated violent overthrow of our Government. Hence, the question put to Petitioner by the Immigration Examiner here concerning membership in any organization teaching and advocating violent overthrow, did not relate to Petitioner's membership in the Communist Party; and if it did, it nevertheless was truthfully answered in the negative by the Petitioner.

The books and pamphlets offered here to show the character of the Communist Party's teaching and advocacy in 1933-1938 are the same as those considered and held to be insufficient by this Court in *Schneiderman;* the oral testimony of the Government's witnesses is far more conclusory, less specific and patently less reliable in this case than the oral testimony considered by this Court in *Sch-*

neiderman; and, like *Schneiderman,* there is here a complete absence of *any* proof that the Petitioner subscribed to or knew of the claimed proscribed character of the Communist Party. And, finally here as in *Schneiderman,* we have a judicial finding by a competent court that all factual conditions necessary to a valid naturalization order exist and there is no subsequent finding of fraud.

This Court, then, is called upon here to decide if *Schneiderman* is still the law; or if, as the Government contended in the Court below, *Schneiderman* today stands only for the proposition that proof in denaturlization proceedings must be "clear, convincing and unequivocal".

We believe it to be vitally important in the future administration of the denaturalization law, that this Court accept jurisdiction of this proceeding and re-affirm the principles of due process of law enunciated in *Schneiderman.*

CONCLUSION

For the reasons herein stated it is respectfully submitted that this Court should grant its Writ of Certiorari to review the judgment of the Court of Appeals in this matter.

Respectfully submitted,

GOODMAN, CROCKETT, EDEN & ROBB,
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May 5, 1954.

Supreme Court of the United States

OCTOBER TERM, 1975

No. [redacted] 75

GEORGE CHARNOWOLA,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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BEFORE THE

Supreme Court of the United States

OCTOBER TERM 1953

No.....

GEORGE CHARNOWOLA,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

To: The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, George Charnowola, defendant-appellant below, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit affirming the judgment of the United States District Court for the Eastern District of Michi-

gan, Southern Division, revoking and cancelling Petitioner's Certificate of Naturalization.

OPINION BELOW

The opinion of the Court of Appeals does not appear to have been reported as yet. A copy is included as an Appendix to the Petition for Certiorari in *Sam Sweet v. United States,* which is filed simultaneously with this Petition. The Court of Appeals rendered combined opinions in this case, the *Sweet* case and the case of *Chomiak v. United States.* Separate Petition for Certiorari is being filed in each of these cases.

The opinion of the District Court is unreported as yet, but is summarized in the Statement *(infra).*

JURISDICTION

The jurisdiction of this Court is invoked under Title 28 U. S. C., Sec. 1254 (1).

The judgment of the Court of Appeals was entered on February 19, 1954; and by order, dated April 7, 1954, the judgment was stayed for thirty (30) days pending application to this Court for a Writ of Certiorari.

QUESTIONS PRESENTED

I. Has the Government established by "clear, convincing and unequivocal" evidence:

(1) That Petitioner was at any time a member of the Communist Party and falsely denied such membership; and

(2) That the Communist Party was an organization proscribed by the law in effect during the period 1925 to 1932 when it is claimed that the Petitioner was a member and/or by the law in effect at the time of Petitioner's naturalization in 1946; and

(3) That the Petitioner, during the period when it is claimed that he was a member of the Communist Party, had knowledge of the proscribed character of that organization?

II. May a judicial finding in naturalization proceedings that a Petitioner has no proscribed organizational connections, be subsequently re-examined and voided because of "fraud" where the claim of fraud is predicated entirely upon a conflict between the sworn statement of the Petitioner at the time of naturalization and testimony given years later by other witnesses, each of whom is himself in fear of denaturalization proceedings?

III. Assuming (what Petitioner denies) that in swearing that he was never a member of the Communist Party, his statement was false insofar as it related to a period which antedated the statutory ten year period, was such misstatement fraud within the meaning of the denaturalization statute?

STATUTES INVOLVED

The statutory provisions set forth in the Petition for Certiorari in *Sam Sweet v. United States* (which is filed simultaneously with this Petition) are equally pertinent here and are therefore incorporated herein by reference.

STATEMENT

Petitioner, George Charnowola, a Rumanian by birth, is a man in his early sixties. He migrated to Canada prior to 1911 and thereafter entered this country for permanent residence in 1920.

Petitioner has never been arrested. He is employed by the Michigan Central Railroad as a blacksmith. He is married to a naturalized citizen, owns his home, and has lived in Detroit since the early 1920's, except for a brief period of residence in Cleveland in 1932-33.

In March, 1945, Petitioner filed his petition for citizenship. He was naturalized by order of the United States District Court at Detroit, Michigan, on January 28, 1946 after investigation by, and upon recommendation of, the Immigration and Naturalization Service.

The present proceeding for denaturalization was commenced by Complaint filed on March 14, 1952 under Section 338(a) of the Nationality Act of 1940 (Title 8, U. S. C. Sec. 738(a)).

The Complaint alleged that in the course of his naturalization examination, Petitioner was asked by the Examiner and falsely denied that he had ever been a member of the Communist Party. It is claimed that Petitioner was a member of the Communist Party "during the years about

1922 until 1934," (a period more than ten years prior to his Petition for naturalization). The Complaint charges that petitioner "was not a person of good moral character, and was not attached to the principles of the Constitution and well disposed to the good order and happiness of the United States." Cancellation of Petitioner's naturalization was prayed for "on the ground of fraud and illegality".

Petitioner's Answer denied the material allegations of the Complaint; asserted that the judgment of naturalization was *res adjudicata* on the issues raised in the Complaint; and, relying upon the First and Fifth Amendments to the Constitution, challenged the constitutionality of the above sections of the Nationality Act of 1940 "on its face and as applied" to Petitioner.

At the trial, (Tr. 70)* the Government abandoned its claim of illegal procurement and announced that it relied solely upon the charge of fraud. The theory of the Government was that Petitioner was a member of the Communist Party in a period more than ten (10) years prior to his naturalization and that Petitioner lied when he denied ever having been a member of the Communist Party.

By agreement of the parties there was introduced in evidence the naturalization forms executed by Petitioner and two (2) question and answer statements (Exh. 3 and 4) made by Petitioner to the Immigration examiners.

In the first statement (Exh. 3) dated September 16, 1944, Petitioner stated that during the period from 1923 to 1932 he was a member of the Ukrainian-American Branch of the International Workers Order, "an insurance group"; the Ukrainian United Toilers Association and the Ukrainian Educational Society. He identified these organizations as cultural language groups and he denied that these organiza-

*"Tr." refers to the trial transcript.

tions were in any way connected with the Communist Party. Petitioner affirmed also that he received the *Ukrainian Daily News;* and that "once in a while" in 1933-1935 he bought the Daily Worker "maybe once a week".

This statement shows that the following questions were then put to, and answers given by, the Petitioner:

> "Q. What do you think of our present form of Government?
>
> A. Well, I think 100 per cent in my opinion.
>
> Q. Do you think that we should change our form of government?
>
> A. No, never. I not agree with that—to change.
>
> Q. Do you understand our form of government?
>
> A. I understand, but not 100 per cent, but I understand very well. When I did my paper for citizenship—all those things, I understand.
>
> Q. During the period of time that you were on welfare in Cleveland, Ohio, what did you think of our government then?
>
> A. Well, I don't think nothing much over there, because it was depression, and everybody didn't have jobs, and we got help. I don't think nothing badly. I can't think bad of the United States government, because we are here and we make our bread and butter here. The government is run all right—liberty and democracy; that is all right with me.
>
> Q. In your own mind, do you think that our government is the true representative of the people of the United States?
>
> A. Well, Government of the United States—yes.
>
> Q. Do you think that our government should continue in that form of representation of the people, or should they change it?
>
> A. Well, should continue. I like it. I'm satisfied that everybody work, and I have nothing against it.

Q. Is there anything about the government that you don't like?

A. Well, I'm just a working man—I don't go in for politics. I like the government—I see nothing bad about it. I tell the truth, and I don't go in for politics, that is a little too deep for me. I'm glad I'm here. I like it here, and I want to get my citizenship papers and legalize it."

In the second statement (Exh. 4) taken on November 19, 1945, Petitioner reiterated his denial of Communist Party membership; affirmed his belief "in the form of Government that we have in the United States;" and his disbelief "in the forcible overthrow of the Government of the United States." He was then asked and answered as follows:

"Q. Of what clubs, organizations or societies have you been a member during the past ten years?

A. International Workers Order, Ukrainian branch. Not any others.

Q. Are you an officer of the International Workers Order?

A. I am the financial secretary.

Q. Are you employed elsewhere than by the International Workers Order?

A. Yes, I am working for the Michigan Central Railroad as a blacksmith's helper.

Q. Is the International Workers Order connected with the Communist Party?

A. No.

Q. Have you ever been a member of the Communist Party?

A. No, never.

Q. Do you believe in the form of government that we have in the United States?

A. Yes.

Q. Do you believe in the forcible overthrow of the government of the United States?

A. No, I don't believe in that.

Q. Does the International Workers Order contribute any funds to the Communist Party of America?

A. I don't think anything like that. That's insurance.

Q. What are your duties as financial secretary?

A. Collecting dues from the members according to their policies once a month.

Q. Where do you send the dues?

A. To the IWO headquarters at New York.

Q. Have you ever sent any portion of the dues to the Communist Party or to the Daily Worker Newspaper?

A. No.

Q. Have you ever known a member of the Silver Shirts?

A. No, I don't know what that is.

Q. Have you ever been a member of the American League for Peace and Democracy?

A. No.

Q. At the time of your alien registration in 1940, you stated in answer to the question 'I have been within the past five years or intend to be engaged in the following activities (list memberships or activities in clubs, organizations or societies)' as follows: 'American Political Organizations in the U. S. larger political organization, U. S. in character, such as Silver Shirts, American League for Peace and Democracy, etc.'

Q. Do you now state that you were not a member of these organizations?

A. I never put that on the application because I don't belong there. I put IWO because I belong there.

Q. Can you explain why that information should be in your alien registration record?

A. No, I can't.

Q. Did you give that information?

A. No.

Q. Did you read your alien registration before you signed it?

A. No, I didn't. I thought it must be all right.

Q. Have you ever taken part in Communist parades or meetings?

A. No.

Q. Have you ever engaged in any political activities in the United States?

A. No.

Q. Are you willing to bear arms in defense of the United States against any country?

A. Yes.

Q. Would you be willing to bear arms against Russia if called upon to do so?

A. Why certainly.

Q. Did you ever hear any speeches by William Dudley Pelley?

A. No.

Q. I ask you again, if you, in any way can account for the fact that your alien registration record shows that you were a member of the Silver Shirts and American League for Peace and Democracy?

A. No, I can't."

Following the receipt in evidence of the above statements, Petitioner was called by the Government for cross-examination and he affirmed that prior to his naturalization he had been questioned by officers of the Immigration and Naturalization Service. But, upon the advice of his counsel, he invoked his privilege under the Fifth Amendment and declined to repeat anew the answers he had previously given in 1944-45 to the question of membership or affiliation with the Communist Party. His claim of the privilege was upheld by the Trial Court (Tr. 4-8).

Thereafter, three naturalized citizens were called by the Government as witnesses. Each of them testified that in the period 1925-1932 he had been a member of one or more Ukrainian organizations of which Petitioner also was a member. Each of them also identified Petitioner as

a member of the "Ukrainian Branch of the Workers' Party," or the "Workers (Communist) Party," and characterized the particular organization as the Communist Party.

On cross-examination each of these witnesses admitted that at the time of his own naturalization examination, he did not advise the Immigration Service that he was or had been a member of the Communist Party. And two of these witnesses admitted on cross-examination (Tr. 32, 59 and 76) that his claimed recollection of Petitioner's membership in the Communist Party had been refreshed by visits from or to the Immigration Service and by being confronted with what purported to be "the minutes" of a certain 1925 meeting. At Petitioner's request, the Trial Court ruled that the Government produce these minutes (Tr. 32-33). Petitioner, thereafter offered in evidence the entire minute book, but on objection by the Government that the book "doesn't all relate to the Communist Party," only the minutes of the alleged 1925 meeting were received (Tr. 78-81).

These minutes purport to be the record of a meeting of "Branch #5, Ukrainian Federation Workers Party of America," held on January 4, 1925 at a Ukrainian Hall in Detroit, Michigan. A translation of the minutes by the Government's witness, Kunka, showed the following (Tr. 97-100):

> "Meetings from January 4th, 1925. Yearly meeting. Branch No. 5 Ukrainian Federation Workers Party of America. Meeting was opened by Comrade Kunka."
>
> * * * * *
>
> "Comrade Kucij was elected chairman of the meeting, with following program. First, reading of the previous meeting's minutes. Second, correspondence. Third, reports. Fourth, discussion

on reports. Fifth, enrollment of new members and election of new officers. The program was accepted unanimously.

"After reading of the minutes, the correction was made about the money collected for Comrade Kruka (?) of New York."

* * * * *

"In the minutes it said that $4.00 was collected for Comrade Kruka but that was mistake. There was $8.04 collected.

"Correspondence came from Ukrainian Bureau, Workers Party of America, to collect the money for Ukrainian Daily News that has been in collection for some time. Also there was correspondence from City Central Committee, Workers Party of America.

"New members: Five and one with recommendation from another branch. New members, Chaschwy, Charnowola,* Skrypnyk, Adowicz, Sarachman, with one from another branch, Comrade Malik. All the members were accepted to Branch No. 5, Ukrainian Federation, Workers Party of America.

"New Officers: Organizer, Comrade Kunka. Financial Secretary, Burakowsky. Treasurer, Marusiachyn. Recording Secretary, Semetij (?). Delegates to City Central Committee, Ferbey, Orysczuk. To auditing committee, Malik, Humeniuk. Library elected Matczuk (?), Charnowola, Firman. Delegates to Ukrainian Toilers Organization, Koposky (?), Kundel. Members of the whole, Kucuj. To entertainment committee, Febey.

"Different matters. It was asked to collect all the list—collection list of Ukrainian Daily Worker within two weeks.

"Delegates to school council, Kunka, Janszuk.

"Delegates to Ukrainian Educational Branch. Was decided to have the executive committee appoint somebody.

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*It is claimed by the Government that this reference is to the Petitioner.

"There was donations to Ukrainian Educational Home. We borrowed $50, so Comrade Kucij pay $10, Janczuk $20, Burakowski $10, Firman $10.

"Delegates to Ukranian Educational Home elected, Mataczuk (?), Charnowola, Chaschwy, Sarachman and Baby.

"It was decided to hold the meeting every first Sunday in the month, 10:30 in the morning."

"Every member should be present."

"The meeting was closed.

"Q. (By Mr. Goodman): Signed by whom?

"A. Signed by fellow, he died, Burakowsky."

* * * * *

The witness Kunka had testified (Tr. 88) that the Workers' Party of America split in 1923, resulting in the formation of two separate organizations. One of these retained the name "Workers Party of America" and was known as "the Ruthenberg branch;" the other took the name "Workers (Communist) Party of America," and was known as "the Foster branch." Kunka said that he was a member of "the Ruthenberg branch" and declared that this branch was not the Communist Party (Tr. 15, 88).

The Government offered no evidence whatever concerning the nature, the character nor any teaching and advocacy of any of these organizations; nor did it offer any evidence as to the character, teaching and advocacy of the Communist Party at any time. Its position, as stated at the trial, was "If he (Petitioner) was ever a member of the Communist Party, we have proved our case."

Neither the Petitioner nor any other witness was called to the stand by the defense to answer the Government's charge. The defense relied upon the above-mentioned record made at the time of naturalization.

The Trial Court's opinion summarized the evidence thus:

> "• • • While this documentary evidence [the minutes] might be questioned it was merely corroborative of the evidence that had preceded and if entirely eliminated from consideration would still leave proof that the Workers Party of America, to which defendant belonged, was a Communist organization. The fact that the word 'Communist' did not appear in the minutes by which the witnesses refreshed their memory is not fatal since it was explained that it was part of the then 'tactics' of the Communist Party of Russia that the word 'Communist' was not to appear in any of the proceedings in this country. There is proof that the real name of the Workers Party was Workers (Communist) Party with the word 'Communist' in parenthesis."
>
> "While Counsel for defendant easily confused the witnesses on matters that might under some circumstances raise the question of credibility he was unable to confuse or eliminate from their testimony the claim that they had been Communists and that the defendant had been a Communist at the same time. These men were not educated and, it was apparent that many times they didn't understand the questions. But when they testified concerning the minutes of the Workers Party you were compelled to believe that their evidence was of solid quality; that it was 'clear, unequivocal, and convincing' and that the defendant had been an active, dues paying member of the Communist Party at least at some time prior to the day he filed his petition to become a citizen of these United States. No evidence contra being produced, defendant might still be a member of the Communist Party."

The opinion then refers to the defense contention "that there is no evidence that membership in the Communist

Party is *per se* illegal or that being a member thereof makes one an advocate of overthrowing this government by force and violence," and answers:

> "For years the Communist Party has been in disrepute in this country. The land of its parent domicile was accepted during the war as an ally but the credo and ideology of Communism was never accepted. Some well intentioned people may have had doubts as to what that credo was but not the members of the Communist Party themselves. Both here and in Russia it is now apparent that at all times the Communist Party aimed to destroy America by force and violence. And perhaps those who had any doubt based it on what they thought was the Communists lack of strength to attain an objective so hostile to our theory of government."

The Court then refers to this Court's opinions in *Dennis v. United States,* 341 U. S. at 498, and *Blau v. United States,* 340 U. S. 161, and to its own prior holding in *Albertson v. Millard,* 106 F. Supp. 646 (rev'd in 345 U. S. 242) and interprets these holdings as establishing that one admitting to affiliation "could reasonably fear that criminal charges might be brought * * *." And then, pointing out the Petitioner's reliance upon his Fifth Amendment privilege, the Court concluded that "Here was an admission in open court that to be a Communist was incriminating." This, the Court held, showed that:

> "* * * the question asked by the examiners must have been material and, by reasonable deduction, proof—if such proof is necessary—that to be a Communist one must have aims hostile to this country. It was a question that defendant should have answered truthfully and we hold that he did not. Therefore, defendant became a citizen of the United States by fraud."

The opinion of the Court of Appeals affirming the judgment appears in the Appendix to the Petition for Certiorari filed in *Sweet v. United States, supra.*

REASONS FOR GRANTING THE WRIT

The reasons set forth for the granting of the writ in *Sam Sweet v. United States* (Petition filed at same time as this Petition) are equally applicable here and are therefore incorporated by reference.

There is an additional reason for granting the writ here. The organizational proscription contained in Section 305 of the Nationality Act of 1940 is expressly limited to membership or affiliation within the ten year period immediately prior to the filing of the petition for naturalization. This, we submit, reflects the Congressional intent that membership in a proscribed organization during a period which antedates the ten year period should be regarded as immaterial. *United States v. Waskowski,* 158 F. 2d 962 (C. A. 7, 1947).

The examiner's questions to Charnowola concerning Communist membership or affiliation were not in terms limited to the ten year statutory period; they embraced the immaterial prior period as well. If it be assumed that Charnowola's denial of membership was false, the falsity is at most a mis-statement—a mis-statement devoid of any intent to deceive and related to a matter which Congress regarded as immaterial. Yet, it is this mis-statement which the Courts below have taken as a basis for their finding of fraud.

The interpretation which the Court of Appeals for the Sixth Circuit has placed upon this ten year statutory provision would appear to be in conflict with the interpreta-

tion placed upon this provision by the Court of Appeals for the Seventh Circuit in the *Waskowski* case, *supra*. Only this Court can resolve that conflict.

CONCLUSION

For the reasons herein stated, it is respectfully submitted that this Court should grant its Writ of Certiorari to review the judgment of the Court of Appeals in this matter.

Respectfully submitted,

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